

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

BERNICE RUTLAND

PLAINTIFF

V.

NO: 3:21CV234-M-JMV

**ROBINSON PROPERTY GROUP, LLC,
DESERT MEDICAL EQUIPMENT, d/b/a
DESERT MEDICAL EQUIPMENT, INC.,
and CYNTHIA JANIE SCOTT**

DEFENDANTS

ORDER

Before the Court is defendant Desert Medical Equipment's, d/b/a Desert Medical Equipment, Inc., Motion to Dismiss for Failure to Properly Serve. [36]. Plaintiff Rutland filed a complaint in the Circuit Court of Tunica County, Mississippi, on October 14, 2021. A Notice of Removal [1] was filed on November 9, 2021. The Clerk of this Court entered a Notice of Incomplete Process as to DME on December 13, 2021. [10]. Plaintiff later filed its First Amended Complaint [17] on January 26, 2022. Plaintiff has not served nor provided proof of service of Desert Medical Equipment for both the initial complaint and the first amended complaint.

Rule 4(m) of Federal Rules of Civil Procedure states that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* Additionally, even if the plaintiff lacks good cause, the court has the discretionary authority to extend the time for service. *Millan v. USAA General Indem. Co.*, 546 F.3d 321, 325 (5th Cir. 2008) (citing *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996)). As this matter began in Mississippi

Circuit Court, the Mississippi Rules of Civil Procedure require that a defendant must be served within 120 days after the complaint is filed. Miss. R. Civ. P. 4(h).

Plaintiff has failed to serve defendant Desert Medical Equipment on two separate occasions, these being the deadline of February 11, 2022, for the initial complaint and the deadline of April 26, 2022, for the first amended complaint. Plaintiff has not responded to the present motion and thus has not made a showing of good cause for the failure. Further, plaintiff has not requested an extension of time for service.

ACCORDINGLY, defendant's Motion to Dismiss for Failure to Properly Serve [36] is **GRANTED** and plaintiff's claims against defendant Desert Medical Equipment, d/b/a Desert Medical Equipment, Inc., are **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED, this the 8th day of July, 2022.

/s/Michael P. Mills
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF MISSISSIPPI